REMARKS

Claims 1-40 are pending in the present application. Applicants gratefully acknowledge the allowance of claims 2-5, 10, 11, 15-19, 22, 23, 25 and 26 if rewritten in independent form. Claim 41 has been added and is believed to be allowable. Claims 1, 6-9, 12-14, 20, 21, 24 and 27-40 stand rejected. The Examiner's reconsideration of the claim rejections is respectfully requested in view of the following remarks.

Claims 1, 6-9, 12-14, 20, 21, 24, 27-40 stand rejected under 35 U.S.C. §102(e) as being anticipated by Sweet (U.S. Patent No. 6,836,800) (hereinafter "Sweet"). The rejections are respectfully traversed.

Claim 1 claims, *inter alia*, "monitoring, over a period of time,...*a number of active devices* to obtain monitored values of...*the number of active devices*." Sweet does not expressly disclose monitoring "monitoring...a number of active devices." It follows that Sweet also does not disclose "predicting the subsequent resource utilization, based upon the monitored values of the contemporaneous resource utilization *and the number of active devices*," also as claimed in claim 1.

The Office Action states in an Examiner's Note that "the number of active devices is integrated into the system operation." Additionally, the Office Action seems to argue, in another Examiner's Note, that "automatic adaptation," as taught by Sweet, implies "the number of active devices," as claimed in claim 1. First, such arguments are entirely speculative and are not proper under § 102, which requires that each and every limitation of the claims be disclosed in the prior art. Second, such arguments seem to be based on inherency or an implicit suggestion. It should be noted that inherency must be an *inevitable* result and not merely a possibility. *See In re Oelrich*, 666 F.2d 578, 581-82, 212

USPQ 323, 326 (CCPA 1981). Applicants do not believe this to be the case. As such, Applicants respectfully request citation to the prior art or an Examiner's affidavit establishing the basis of the Examiner's Notes and other assertions.

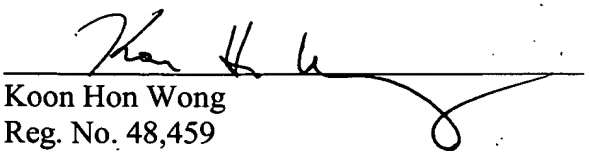
Applicants respectfully submit that signatures, as taught by Sweet, are simply data patterns of the network within given time intervals without regard to active devices. Applicants refer, for example, to col. 2, line 55 to col. 3, line 17 of Sweet, which provide two specific examples of signatures that do not address active devices. A first example teaches that "light traffic signature." For example, gathered data may indicate that data traffic during the hour of 2:00am to 3:00am is nil or very light. The light traffic signature may be used to alert a network manager if unusually high traffic occurs *during that hour*. A second example teaches that a signature may be used to indicate response time (i.e., the round trip of a transaction). For example, gathered data may indicate that during the hour of 10:00am to 11:00AM each weekday, a particular page on a website is almost fully retrieved in about ten seconds. The signature may be used to alert a network manager if the response time exceeds ten seconds by a significant amount. Neither example described above addresses "active devices," as claimed in claim 1.

Accordingly, independent claim 1 is believed to be patentably distinguishable over Sweet. Independent claims 21, 31, 38, 39 and 40 are believed to be allowable for at least the reasons given for claim 1. The remaining rejected dependent claims are believed to be allowable as depending from allowable base claims. Withdrawal of the rejection of claims 1, 6-9, 12-14, 20, 21, 24, 27-40 under 35 U.S.C. §102(e) is respectfully requested.

Newly added claim 41 is believed to be in condition for allowance.

In view of the foregoing remarks, it is respectfully submitted that all the claims now pending in the application are in condition for allowance. Early and favorable reconsideration is respectfully requested.

Respectfully submitted,

By: 

Koon Hon Wong
Reg. No. 48,459
Attorney for Applicants

F. CHAU & ASSOCIATES, LLC
130 Woodbury Road
Woodbury, NY 11797
Telephone: (516) 692-8888
Facsimile: (516) 692-8889